S.B.CIVIL WRIT PETITION NO.3212/2003

Kanti Lal
v.
The Industrial Tribunal-cum-Labour Court, Udaipur
& Anr.

DATE OF ORDER :: 4th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.R.Mehta, for the petitioner.
Mr. G.R.Punia, for the respondents.

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By this petition for writ a challenge is given to the award dated 26.9.2002 passed by learned Judge, Labour Court, Udaipur in Labour Case No.83/95.

In brief, facts of the case are that the appropriate government by its notification dated 18.7.1995 referred an industrial dispute to the Labour Court, Udaipur for its adjudication in following terms:-

> " क्या मैंनेजर बोरवट कृषि फार्म कृषि अनुसंधान केन्द्र बोरवट जिला बांसवाड़ा द्वारा श्रमिक कांतिलाल जोशी बेलदार की दिनांक 1.7.90 से सेवा से मौखिक रूप से बिना मुआवजा दिये सेवा से पृथक करना उचित एवं वैध हैं ? अगर नहीं तो श्रमिक किस राहत एवं राशि को पाने का अधिकारी हैं ?"

The Labour Court by the award impugned held that termination of the petitioner from service was just and valid as the petitioner did not remain in continuous employment of the employer for a period of 240 days in any calender year. The award dated

26.9.2002 was published by the appropriate government in accordance with Section 17 of the Industrial Disputes Act, 1947 by a notification dated 5.12.2002.

While giving challenge to the award dated 26.9.2002 it is urged by counsel for the petitioner that the Labour Court erred in computing actual number of working days which are admitted by the employer. It is further stated that the petitioner entered in the services of the respondent employer in the month of August, 1980 and he was retrenched from service on 1.7.1990, therefore, there was no need to compute 240 days to treat the petitioner in continuous employment for a period of one year.

A reply to the writ petition has been filed on behalf of the respondent emphasising therein that the petitioner never worked for a period of 240 days in a calender year.

Heard counsel for the parties.

It is not at all disputed by the employer that the petitioner was appointed as a daily rated workman in the month of August, 1980. The only contention of the employer is that the petitioner has not completed 240 working days in a calender year. The term continuous service for a period of one year is required to be interpreted and determined in

accordance with the provisions of Section 25-B of the Industrial Disputes Act, 1947. Under Section 25-B of the Act of 1947 the determination of 240 working days is required to be made only if the workman has not completed service for one calender year. In the instant matter the petitioner is in employment of the respondent employer since 1980, therefore, there was no occasion to compute 240 days to determine one year continuous service. The finding given by the Labour Court that the petitioner was not in continuous service, therefore, on its face appears to be erroneous. The award impugned, therefore, deserves to be quashed.

Accordingly, this petition for writ is allowed. The award impugned dated 26.9.2002 is quashed and the Labour Court, Udaipur is directed to decide the industrial dispute referred to it by notification dated 18.7.1995 afresh by treating the petitioner in continuous employment. The Labour Court is required to examine validity of the termination of the petitioner w.e.f. 1.7.1990 by treating the petitioner in continuous employment of the respondent.

No order as to cost.

(GOVIND MATHUR),J.

kkm/ps.